



## Policy Brief: Lessons from Transitional Justice?

Hamber, B., & Lundy, P. (2020, May 15). Policy Brief: Lessons from Transitional Justice? Toward a New Framing of a Victim-Centered Approach in the Case of Historical Institutional Abuse. Ulster University.

[Link to publication record in Ulster University Research Portal](#)

### Publication Status:

Published (in print/issue): 15/05/2020

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## Briefing Paper

# LESSONS FROM TRANSITIONAL JUSTICE? TOWARDS A NEW FRAMING OF A VICTIM-CENTRED APPROACH IN THE CASE OF HISTORICAL INSTITUTIONAL ABUSE

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**This policy briefing draws upon the Northern Ireland Historical Institutional Abuse Inquiry to explicate the nexus of historical institutional abuse inquiries with transitional justice approaches. Through detailed analysis of empirical research with those who gave testimony to the Inquiry, the briefing explores to what extent the Inquiry was victim-centric, participatory and responsive. Drawing on lessons from transitional justice, the brief outlines five recommendations that could strengthen the victim-centred nature of approaches to dealing with the legacy of historical child abuse. The brief concludes that addressing victims' needs should be the linchpin for both transitional justice and historical institutional abuse approaches.**

## Introduction

The legacy of historical institutional abuse (HIA) by a range of institutions, and the Catholic Church specifically, has reverberated across the globe in recent decades. The issue of HIA has garnered significant attention in many countries leading to inquiries and investigations.

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For a more detailed discussion of all points raised in this briefing paper see Brandon Hamber & Patricia Lundy (2020). *Lessons from Transitional Justice? Toward a New Framing of a Victim-Centered Approach in the Case of Historical Institutional Abuse, Victims & Offenders*, DOI: 10.1080/15564886.202

Victims of HIA have several routes in pursuit of justice, through criminal prosecution, civil litigation, public inquiries and redress schemes. A common response to HIA has been to launch an inquiry investigating the past, built around interviews, oral history or narrative testimony, typically leading to apology, compensation and redress.

A new area of study has emerged concerning HIA trends worldwide (Wright, Swain, & Sköld, 2017), including a focus on the scope of inquiries; justice for victims; procedural and restorative justice, and whether victims have benefitted from processes. Throughout this scholarship limited reference is made to transitional justice (TJ). Only a handful of scholars (Gallen, 2016; Henry, 2015; King, 2018; McAlinden, 2013; McAuliffe, 2017; Nagy, 2013; Sköld, 2016) have begun to explore the relationship between TJ and HIA.

This briefing paper develops the growing focus on TJ, initially on victims and to what extent TJ and HIA processes are victim-centred and participatory rather than focused on legal / institutional reform. The next section explores the nexus of HIA and TJ and how TJ has addressed victims' needs to date. Thereafter the briefing addresses the Northern Ireland Historical Institutional Abuse Inquiry (HIAI), using research to highlight challenges regarding treatment of victims. The briefing offers a set of recommendations on how a victim-centred approach to HIA, informed by lessons from TJ, can be advanced.

## Transitional Justice and Historical Institutional Abuse

Synergies between HIA and TJ have been proposed on several levels.

First, Gallen (2016) argues that TJ's harm-centric approach may be appropriate to the issue of clerical child sexual abuse. McAuliffe proposes that TJ can provide "normative guidance on the constituent elements of a sensitive response to patterns of harm" (McAuliffe, 2017, p.453). Henry (2015) argues that in the Australian case, a TJ framework could better serve aboriginal people by enabling a normative evaluation of the nature and extent of justice measures.

The term victim is used in this article as it is the recognised legal term for those who have suffered violations in the past at the hands of others, and most recognisable by the wider public. The use of the term victim does not preclude self-identification to other categorisations such as survivor.

A second point of intersection between HIA Inquiries and TJ is a common focus on victim testimony (Lundy, 2020; McAlinden, 2013; McAlinden & Naylor, 2016; Wright et al., 2018). In Ireland it has been observed that the language and tools of TJ – healing, restoration and closure – are being mainstreamed into the response to HIA (McAlinden, 2013).

Third, there is potential for use of TJ approaches to address criticism that HIA inquiries have been overly concerned with attributing fault for individual acts, obscuring institutionalised policies (McAlinden, 2013). The Ryan Report (CICA, 2009) was criticised for failing to outline state connections with HIA and the Churches in Ireland (Arnold, 2009). A more TJ-driven focus on HIA may provide a socio-political analysis of violations and systemic social injustices (Gallen 2016).

Finally, TJ offers a more victim-centric focus than current HIA processes. King argues that although the Catholic Church's response to HIA features some elements of TJ, on the whole they failed victims who remain "left out of the conversation" (King, 2018, p.123). The Ryan Report is seen as a "flawed document" in terms of truth-telling as potential abusers were offered anonymity (McAuliffe, 2017, p.464). Gallen (2016) says a victim-centred approach exists more strongly in TJ and would frame the debate better.

Can TJ concepts and practice fill these gaps? It is the contention of this analysis that, although a TJ framework can add to the debate about HIA, learning lessons from the victim-centred approach of TJ presents a more formidable challenge.

## Transitional Justice and Victims

### • *The growth of the victim-centred approach*

The importance of victim participation is increasingly recognised (Ferstman, 2010; Bonacker, Form, & Pfeiffer, 2011). Victims are now the "lifeblood" of most TJ process (Stover, 2004). The United Nations notes that it is essential to "ensure the centrality of victims in [...] TJ processes" (UN, 2010, p.2 and p.4).

Victim participation can result in empowerment, increasing healing, allowing for community acceptance, and can make victims feel valued (Sprenkels, 2017). It can contribute to the wider impact of any TJ process, increasing trust and encouraging victims to come forward (Sprenkels, 2017; Taylor, 2014). It can decrease the likelihood of repetition as victims can play a role in institutional changes (Correa, Guillerot, & Magarrell, 2009).

However, full participation is often superficial (de Waardt & Weber, 2019). Victims are seen as "objects" in TJ without power to influence outcomes (Robins, 2017). A cross-country study of victim participation in TJ mechanisms showed the reality lagged behind the "mantra" of victim participation (Sprenkels, 2017).

### • *Victim voice and participation*

The idea of victim voice and participation in truth commissions is prominent. Research on the South African Truth and Reconciliation (TRC) process found that perceptions of fairness increased if victims had a "voice" in the process (Gibson, 2002). Many victims valued the space to recount their suffering but on the whole participation was limited (Hamber, 2009). A further constraint was the TRC's focus on actions violating the "bodily integrity" of an individual (Mamdani, 2015) and on civil-political rights (Gready & Robins, 2014), rather than wider socio-economic, systemic and structural violence. Similarly, in many TJ

processes, wider social needs of victims are sidelined (Robins, 2017). The direct violence focus of the TRC meant most women spoke of violations against men rather than sharing their own stories (Goldblatt & Meintjies, 1997; Ross, 2003).

Other issues impacting on participation in TJ processes included fear of persecution from perpetrators (Sprenkels, 2017); stigma (Robins, 2011); and discrimination and threats (Brounéus, 2008; Sprenkels, 2017). On the whole, victims find it hard to influence TJ processes and obtain benefits from them (Sprenkels, 2017). For participation to be credible, victims should be involved in the design, implementation, monitoring and follow-up of processes in which they participate (Sprenkels, 2017; United Nations OHCHR, 2009), and be resourced to influence mechanisms that increase their well-being and meet their needs.

#### • *Localising experiences and instrumentalising victims*

Hybrid or mixed approaches have now emerged as the dominant approach to TJ; a combination of trials, truth commissions and tradition-based approaches are now favoured (Hamber, 2015). Victim participation advocacy work, especially by NGOs and academic activists, has often been a successful addition (Aiken, 2016; Hamber, Mosikare, Friedman, & Maepa, 2000; Lundy & Mahoney, 2018).

Complex local processes of reconciliation and justice occur out of sight of mainstream TJ processes and there are many international examples, such as in Uganda (Baines, 2007) and Northern Ireland (Lundy & McGovern, 2005; Panel of Experts on Redress, 2017). However, the dominant view remains that local participation is insufficient by itself and there is a danger in romanticising the local where exclusions on ethnic or gender grounds may exist (Gready & Robins, 2014; Huyse & Salter, 2008).

Elite international networks rather than local movements dominate TJ, often obscuring the participation of victims (Gready & Robins, 2014). Official institutions and TJ “entrepreneurs” (Madlingozi, 2010, p210) can instrumentalise victims and suppress their victimhood, or victims can be

pressured to highlight their suffering for political ends (Sprenkels, 2017).

Victims can find themselves reproducing their victimhood for the “public good” (Humphrey, 2002) to signify a social purpose outside their own needs (Hamber, 2009). Others argue that TJ and the victims’ role can be used as a “veneer of legitimacy” (Snyder & Vinjamuri, 2003), “window-dressing” (Lundy & McGovern, 2008) or “tokenism” (Taylor, 2014).

The main tools of TJ are driven by the needs of the state rather than victims (Robins, 2017, p.42). Although the process may have benefit for the individual, the social purpose and benefit of testimony and participation will seldom meet all the individual’s psychological and social needs (Hamber, 2009).

#### • *Testimony, healing and the treatment of victims*

TJ processes are considered psychologically beneficial to victims (Minow, 1998). Moon argues trauma and catharsis have become “almost axiomatic to post-conflict state-building” (Moon, 2009, p.71). However, TJ has yet to centralise psychosocial support to victims (Robins, 2017). If the “effectiveness of a victim-centred TJ process can be measured in terms of its ability to address victims’ needs” (Robins, 2011, p.79), then most TJ processes could not be defined as victim-centred. When it comes to the mainstream of TJ (trial, inquires, truth commissions), research on victims’ experiences are not overwhelmingly positive. Victims may be ambivalent about the psychological outcomes of their participation in TJ processes (Hamber, 2009, 2015; Mendeloff, 2009) and often giving testimony involves psychological suffering (Brounéus, 2008, p.71).

When truth, justice or reparations do not follow (Hamber, 2009) or when survivors return to destroyed communities (Stover, 2004), benefits of testimony are eroded. Giving testimony is no substitute for a long-term therapeutic intervention for some survivors (Kaminer, Stein, Mbanga, & Zungu-Dirwayi, 2001).

On the positive side, victims testifying before the South African TRC felt that breaking the silence and increasing public awareness about their plight was important (Hamber, Nageng, & O'Malley, 2000; Phakathi & van der Merwe, 2007). However, most survivors felt their expectations were not met (Backer, 2006); the process was seen as disempowering (Byrne, 2004) with little psychological benefit (Kaminer et al., 2001); and poor communication increased their dissatisfaction (Backer, 2006; Hamber 2009). Victims had no control over how their testimony was received or used by the public (Ross, 2003).

The failure to deliver justice in the eyes of most victims impacted on the healing potential of the process (Hamber, 2009, 2015). However victims who received additional support recorded higher levels of satisfaction (Hamber, 2009; Phakathi & van der Merwe, 2007), and these findings are mirrored in other studies (Brounéus, 2008).

International research suggests that it is “highly dubious” that “formal truth-telling processes satisfy victims’ need for justice, ease their emotional and psychological suffering, and dampen their desire for vengeance” (Mendeloff, 2009, p.592-593). Findings are consistent across different TJ process such as trials and truth commissions (Karstedt, 2016, p.53).

• *Conclusion: Victim-centric a bridge too far?*

In terms of TJ being victim-centric, advancements have been made and the necessity to address victim needs is acknowledged. Many victims feel sharing their stories will offer emotional relief (Karstedt, 2016; Mendeloff, 2009; Stover, 2004); and they have a desire for truth-telling, justice and accountability (Mendeloff, 2009). Importantly, many victims are resilient and despite their suffering live rewarding and balanced lives, and most do not suffer from debilitating psychiatric problems (de Ridder, 1997; Hamber, 2019; Robins, 2011). However the rhetoric surrounding TJ mechanisms and their positive impact on victims does not match the reality. Living in poverty exacerbates and shapes how victims understand justice and what is needed to redress the past (Robins, 2011). This raises questions of how TJ processes can make a lasting impact or be genuinely victim-centred, and what lessons TJ can offer when seeking to deal with the legacy of HIA.

# **HISTORICAL INSTITUTIONAL ABUSE:**

## **THE CASE OF NORTHERN IRELAND**

### **Background**

The Inquiry into Historical Institutional Abuse Act (Northern Ireland) became law on 19 January 2013. The subsequent Historical Institutional Abuse Inquiry (HIAI) had two components, a confidential Acknowledgement Forum which listened to victims describe their experiences, and a Statutory Inquiry which heard evidence in public. Victims could choose to participate in the Acknowledgement Forum only, or both components. Four-hundred and twenty-seven victims spoke to the Acknowledgement Forum, and one individual gave a written account. Three-hundred and thirty-three victims gave evidence to the Statutory Inquiry, in person or via witness statements (Hart, Lane, & Doherty, 2017), although the breakdown of male/female is not given in the HIAI Report. Public hearings were held between January 2014 and July 2016. The HIAI examined sexual, physical and emotional abuse and neglect in residential institutions for children (other than schools) between 1922 and 1995. The HIAI investigations covered eleven voluntary homes run by Roman Catholic Religious Orders or other bodies such as Barnardo's, six Training Schools and other juvenile justice sector institutions; and five state run residential institutions. The Inquiry also investigated abuse by Father Brendan Smyth of the Norbertine Order, and the operation of the Child Migrant Scheme (see Hart, 2017). Victims of clerical child abuse outside residential institutions were excluded. The Inquiry found "evidence of systemic failings" in homes and other residential institutions run by the state, local authorities, churches and charities (Hart, 2017). There was also "evidence of sexual, physical and emotional abuse, neglect and unacceptable practices across the institutions and homes examined" (Hart, 2017; Hart et al., 2017, p.8-42). In general, victims welcomed the Report and its findings (Morris, 2017).

### **Methodology**

Research on the HIAI was carried out between October 2014 and July 2017. Forty-three face-to-face interviews were conducted with victims who had attended the HIAI. All those interviewed had both spoken to the Acknowledgement Forum and testified publicly. The sample reflects a cross-section of victims of HIA who were in residential institutions within the Inquiry remit. The purpose of the interviews was to ascertain victims' motivations, expectations and justice needs, and to determine the extent to which inquiries

were victim-centred. Victims were asked in interviews to describe and assess their experiences of the HIAI. The final part of the interview focused on identifying their needs and what could be done to repair the damage (where possible). Anonymised transcripts of evidence available on the HIAI website (HIAI, 2016) were also analysed, and a Panel of Experts on Redress was established in collaboration with victim groups and several reports were co-created and published (Panel of Experts on Redress, 2017, 2018).

### **Findings**

Findings in respect of victims' experiences and assessments of the HIAI are presented across five interrelated themes: motivation for participation; the victim-centric nature of the HIAI; victim participation; trauma; and needs.

### **Motivation**

The main motivations victims gave for taking part in the HIAI were acknowledgement (N19=45%) and to have a voice (N15=34%). As one victim told the Inquiry:

There are some of us that's not here today. They're gone. This is the voices for us all, all, to let the world, let the people know what happened in those institutions that shouldn't have happened. [HIA Transcript: HIA 7]

A recurring theme was that victims wanted to be believed; they sought validation and restoration of dignity. Participation was not easy for many victims as some had not disclosed to their family that they had suffered abuse as a child. Most victims had never spoken publicly about their experiences:

I have a wonderful family, whom I love, and they took me in and cared for me and loved me, and I have two wonderful children as well, and it breaks my heart that I haven't told them that I am doing this, and my children don't even know that I am adopted, because I am too ashamed to tell them unfortunately. [HIAI Transcript: HIA423]



## Victim-centric?

The HIAI was designed to be victim-centred through the Acknowledgement Forum, which sought to provide “an opportunity for victims and survivors to recount their experiences on a confidential basis” (Hart et al., 2017, p.5). The Forum was private, confidential and had therapeutic aspirations seeking to hear testimony and accept without challenge. More than half the victims interviewed said that the Acknowledgement Forum was a positive experience; they valued the space to recount their experience, be listened to and believed. Victims said the Forum conferred acknowledgement (N23=53%), gave voice (N21.5=50%) and overall it was “helpful” (N17=39%). Some victims were of the opinion that the Acknowledgement Forum was all that was required and that the more intrusive Statutory Inquiry was not necessary.

For many the Forum was a positive first step in breaking the silence and denial, but few described it as healing or cathartic (N8=18%). Furthermore, many victims “felt exposed” or “vulnerable” (N17=39%) and experienced emotional consequences (N12=29%) after the Forum. This was compounded when victims received their testimony as a written statement posted to their home:

A lot of our guys would have gone more or less secretly...and then a letter arrives in your post box with 15 pages or whatever...So someone is going to have to go off on their own and read through their statement word for word - and that's a point of vulnerability. [Int: M 5, Nov 2015]

There were mixed views on the support provided during and after the Forum. Some said adequate support and help was provided (29%), others felt more was needed (37%), while some were highly critical. Victims' groups felt they had to “pick up the pieces” (BBC, 2013).

## Participation

The HIAI sought to “engage as many victims as possible” (Hart, 2017). It is estimated through compiling figures on the HIAI website that 27,738 children were resident in the 22 institutions investigated within the Inquiry timeframe. Based on numbers who engaged in the Inquiry (438 persons engaged the Acknowledgement Forum and 333 gave evidence to the Statutory Inquiry) the take-up rate appears low. Reasons why victims may have decided not to participate include shame, fear, secrecy, ill-health, vulnerability, the prospect of psychological difficulties, or lack of knowledge about the process.

Of those who did participate, initially victims were hopeful (if ambivalent) about the process, but later this tended to move toward disappointment. One victim noted that “in the rush to get the inquiry started we overlooked some things”. Another believed that victims did not have the capacity to influence the shaping of the Inquiry.

You have to understand that we're not equipped to deal with the behind the scenes work that goes on in an inquiry [...] and our voices probably meant only 2% out of 200% of that inquiry... so there was a lot that we don't know about...[it's]...right out of our depths. [Int: M7, Nov 2015]

Thirty-two per cent (N14=32%) of victims interviewed raised concerns about the Statutory Inquiry; where it was located and the process of giving evidence in a former courthouse. This view was shared by many, with the setting and environment described as “inappropriate and intimidating” (N12=29%). One factor was the presence of alleged perpetrators and members of institutions being in close proximity to victims in the waiting areas:

The place was packed ... the nuns were there, the de La Salle Order were there, you know, drinking out of the same cups, going to the same toilet, sitting at the same seating area, that was very threatening and humiliating and it shouldn't have been allowed. [Int: F4, July 2016]

Testifying in public, and the court-like setting, compounded anxiety.

I found that whole process a little bit intimidating...it's just that formal structured atmosphere when you go in and there's Sir Anthony and the Panel sitting there and the place is full of media and social workers. [Int: M10, Nov 2016]

These accounts reveal that victims' ability to exercise agency was limited and did not amount to full participation. That said, victim representatives exercised what could be termed non-testimonial agency. For example, victims requested changes to the HIAI terms of reference, resulting in the eligibility of an additional 51 victims (Hart et al., 2017, p.4). A cynical reading of the consultation process was that it served to legitimate the Inquiry rather than fully address victim needs. For some it was a “tick the box exercise” [Int: F4, July 2016].

## The trauma of testimony

In the context of TJ, the therapeutic model assumes that telling one's story is cathartic and can contribute to healing. However, the reality is a mixed picture at best. The HIAI was an "emotional experience" (N24=55%) and "traumatising" (N20=47%), and many "felt vulnerable" (N18=42%).

I'm thinking, I'm going here to find out about myself and it's going to be better and I'm going to know who I am and what happened. But instead I opened this big can of worms and it exploded all around me. [Int: F2, Jan 2016]

Negative experiences in the HIAI rekindled "old" problems; as one victim put it: "I came into this thing as a balanced individual and come out of it unbalanced" [Int: M25, Sept 2016]. Victims spoke in interviews of being re-traumatised and re-victimised, compounding the original trauma and potentially causing psychological harm. As one respondent noted:

I felt like I had a filing cabinet in my head and all the drawers had exploded open, and I was down on the ground trying to put all the pages back in ... [Int: F2, Jan 2016]

The Inquiry stated that public hearings would "be conducted in an inquisitorial fashion", witnesses would not be subjected to inappropriate cross examination (Hart et al., 2017, p.12). But many victims perceived the proceedings differently. Some felt they "were on trial" (N17=39%), a few found it an "intimidating experience" (N8=18%); others felt "victimised" (N8=18%). Some regretted testifying:

I wish personally I'd never done it, honestly...That's how I feel - I just - because I was on anti-depressant tablets - and then I'm on more now - and I had to up my dose too...I feel as if - you know - I'm the bad person. [Int: F1a, June 2017]

Not only did some victims feel they had little control, they were in a process which they believed constrained their voice or that they "struggled to be heard" (N16=37%). Over 40% of those interviewed felt distressed and disempowered by the untimely disclosure of personal and sensitive information in the briefing meeting with the Inquiry's barrister prior to testifying.

Victims' representatives raised concerns with the HIAI including the environment, briefing sessions, preparation, support services and how victims were cross-examined. Interviewees say these concerns were

not acted upon. The relief that was experienced by some from testimony was short-lived and the full consequences of giving testimony became evident over time.

I was talking to my son...in the middle of the conversation he says "yeah - I read your statement. It's online". I didn't know all the statements I'd written are on the HIAI website. I'd been promised high level anonymity - and obviously my name wasn't on it; but there was enough little bits of information in it for him to be able to go through them all and find mine...So I did feel a bit vulnerable... [Int: M10, 2016]

Some said that they had revealed more than they wanted to, and this left them feeling vulnerable feeling they were subject to "character assassination" and in the "months that followed have resulted in my seeking counselling; my whole well-being was at an all-time low even to the extent I contemplated suicide..." (M, 10 June 2018). Some victims believed that the HIAI damaged their integrity and/or their family exposing unnecessarily intrusive information. This raises questions about the correlation between voice and dignity, and reinforces research that recounting harm does not guarantee it will be received as testifiers might wish (Ross 2003).

Of the victims interviewed, 42% said that they had "insufficient information and understanding" of the public hearing procedures. Just two victims (5%) said they were well informed. This raises questions of ownership of public narratives and whether adequate information was supplied to enable informed consent.

## Victims' needs

Victims had expectations that the HIAI would enable them to testify, tell their story and validate their past and that this would be therapeutic or provide justice. Whether the HIAI was perceived as ultimately valuable to those interviewed was contingent upon the outcomes of the Inquiry. Apologies were perceived by some (N27=63%) as important. Yet some considered apologies pointless and opened the door for insincerity, strongly expressing the view that apologies had little worth in isolation from justice measures and needs, echoing the TJ literature. The HIAI clearly heard the desire for an apology, making such a recommendation in its final report (Hart et al., 2017).



Compensation was a priority for many. Almost 80% cited compensation as a desired outcome of the HIAI. Some found it difficult and offensive to quantify their suffering. “What price is a childhood ...You can’t put a price on that” [Int: F19, July 2016]. When compensation was desired, it was not seen in isolation, but linked to repair or rehabilitation measures. For many, historical abuse is not historical; they live with the consequences every day. Many lived with associated mental health concerns, and said historical abuse limited their socio-economic horizons.

Reparative measures identified by victims included healthcare services, long-term counselling, education and training, inter-generational needs and reunion with family/siblings. Loss of opportunity was frequently cited. Victims stated that measures should extend to their dependents who have suffered as a consequence of the inter-generational effect of institutional abuse.:

I know a few of our people who are hoping to get money to help their children, because some of our people’s children’s children or even grandchildren are still in that poverty trap because of the lack of knowledge their granda had or their father had, or lack of education that they had. So I think redress is very important, very important. [Int:M8, Nov 2015]

Access to records emerged as an essential element of redress. Many felt an acute loss of identity not knowing the full extent of their lives as children in care.

Redress can also be symbolic. The HIAI specifically asked victims about their views on a form of memorial to pay tribute to the harms suffered. There were mixed views on a memorial, which could be seen as a form of acknowledgement and remembrance (13%) or as a painful reminder which might even be harmful (26%). The HIAI noted many victims did not want “to be reminded of their experiences as children in residential institutions” (Hart, 2017, 43), but recommended a memorial be erected to “remind legislators and others of what many children experienced” (Hart, 2017, p.43).

A key motivation for participating for many victims was to get “the truth”. They explained this in terms of needing to “understand what happened”. Some wanted access to new information, to create an authoritative record or get answers to personal

questions. Others were more cynical, saying they already knew the truth; all they wanted was acceptance of responsibility and accountability. In interviews, a sizeable majority of victims (N31=71%) expressed a strong desire for those who abused them to be criminally prosecuted through the courts, which motivated them to go through the trauma of giving evidence to the HIAI, and many victims (39%) wanted individual perpetrators to be held to account. A constant theme in the research was that victims were driven to participate in the HIAI to ensure that it would “never happen again”.

## Recognising needs: The final report

The HIAI in its final report made a set of recommendations for compensation, an apology, a memorial, specialist care and assistance, and for the establishment of a Commissioner for Survivors of Institutional Childhood Abuse (COSICA) (Hart et al., 2017, pp.227-256). However, these do not cover the full range of needs identified (e.g. access to files, non-repetition, institutional reform, justice, compensation, accountability) (Lundy & Mahoney, 2018; Lundy, 2016, 2020). At the time of writing, victims remain disappointed but are equally engaged in persistent lobbying to influence the legislation being passed to implement redress (Panel of Experts on Redress, 2017, 2018). Most recently victims managed to achieve “significant changes” to the current legislation better reflecting their needs (HIA (Northern Ireland) Bill [HL], 2019). However if Robins (2011) is correct in asserting that the effectiveness of a victim-centred process can be measured by its ability to address victims’ needs, then the HIAI cannot be unequivocally considered a victim-centred process.

## LEARNING FROM TRANSITIONAL JUSTICE?

Gallen (2016) argues that TJ provides helpful framing principles and extends thinking around HIA. It is clear that the focus of the HIAI was limited, not considering all of the aspects a wider TJ focus might consider (e.g. justice, non-repetition, societal transformation, institutional change and education in schools). The HIAI also illustrates that many flaws of TJ mechanisms in making processes victim-centric have been replicated when dealing with victims of HIA.

If HIA inquiries are to learn anything from the TJ field, it is that to address victims' needs is a shared challenge. We now outline five broad areas for consideration, drawing from lessons in the TJ field, that can strengthen the victim-centred nature of approaches to HIA.

### 1. Victim needs as the engine for addressing the past

In the TJ field the statements, charters and levels of guidance about ensuring victim-centrality have had limited effect; more is needed. Certainly, treating victims with due process and respect is essential, and it is vital that complementary processes are in place including counselling, witness briefing/debriefing, victim-sensitive questioning, avoiding delays, and supporting families. But participation restricted to the design, implementation and follow-up phases of TJ mechanisms are too constraining (Sprenkels, 2017); a wider focus is needed. Full participation is a political issue and should equate to increased power and influence (Sprenkels, 2017).

Victim needs cluster around certain issues (e.g. compensation, justice, and acknowledgement), but they are difficult to measure or catalogue. Needs are also dynamic (Hamber, 2009; Robins, 2011, 2017). Although victims wanted justice in the HIAI case study, they had different understandings of what justice meant, e.g. retributive justice, public apology and/or acknowledgement. Needs should not be assumed as has often been the case in the TJ field. Needs extend beyond addressing psychological distress or offering space to share one's story, but are linked to unresolved issues such as the lack of truth or justice, access to personal records, as well as the socio-economic status of victims.

HIA investigations must consider more comprehensive questions of social exclusion, marginalisation, and economic deprivation often exacerbated by social, ethnic and gender positioning. Legal mechanisms alone are not at the heart of TJ. Victims' needs should be the starting point of any HIA process rather than selecting from an a priori menu of options such as truth commissions, trials and compensation packages.

This is not to say that TJ, in the limited sense of focusing on mechanisms, has no place. Knowing why events happened, knowing the truth and being provided with the space to share your suffering are needed for victims to benefit from TJ processes (Karstedt, 2016). Those who spoke before the HIAI clearly expressed these needs, although many felt being given space for testimony was attended to more than issues of truth and justice (e.g. access to their files and holding perpetrators to account). Over-valuing the therapeutic impact of testimony alone must be avoided.

In the HIAI victims wanted guarantees that it would "never happen again" and "changes to the system" would follow. Truth, justice, reparations and guarantees of non-repetition are integral to how victims recover (Hamber, 2009). But a genuinely needs-based approach must be built from the bottom up and be responsive to the social, cultural and political context of the violations. This should guide the entire endeavour, framing TJ and HIA approaches with a much broader time horizon than what is offered by specific TJ processes. Furthermore, there are insufficient studies that evaluate victims' perspectives of historical child abuse inquiries and their needs, more empirical research would help widen the debate.

### 2. Forms of support beyond transitional justice mechanisms

The field of TJ has broadened in recent years, and now includes a wide range of processes including institutional transformation, memorialisation, opening archives, rewriting official histories, offering apologies and building the interrelationship between TJ and development. Grassroots dialogue and truth-sharing outside state-sanctioned approaches should be part of any TJ process (Lundy, & McGovern, 2008; Nagy,

2013). Linking TJ and HIA should seek lessons in historical dialogue (Barkan, 2009), education and TJ (Ramírez-Barat & Duthie, 2017) and restorative justice (Gavrielides, 2012; McAlinden & Naylor, 2016), and not merely focus on mechanisms such as truth commissions, inquiries or trials. If HIA is to be genuinely victim-centred, the long-term nature of recovery and the lifelong impact of political violence and abuse must be recognised.

### **3. Preventing the instrumentalising of victims**

The critical scholarship warns of the danger of a legal and institutional focus, and of victims being used for political ends, and how inquiries can legitimise the state rather than challenge it (see McAlinden, 2013). That the silence around HIA is shattered during the process is important, but this raises questions about the role of victims. Are their needs met, or are they sacrificed in the name of state-building? Are inquiries established to satisfy the public's need for a state response or for governments to deflect accusations of indifference? In the HIAI case study some victims questioned whether the consultation process was a "tick box exercise" aimed at legitimising it. Furthermore, if victims lack capacity and resources to engage fully, meaningful participation becomes questionable. Awareness of the power processes that shape the responses to violations especially by governments must be central to any shared learning.

### **4. Supporting local initiatives and advocacy**

Where the picture involves violations by or neglect by the state, investigatory bodies established by the same state may have their capacity curtailed. Civil society involvement (victim groups, academic activists and journalists) is essential; it can challenge official narratives or the state's desire to produce a limited investigation focusing on individual rather than systemic culpability. Moreover, involvement in advocacy and social action for survivors has been linked to trauma recovery (Hamber, 2009; Herman, 1992).

Indeed, non-testimonial advocacy by victim groups did impact on the HIAI, and the Northern Ireland Redress Act was shaped by victims' groups in Northern Ireland (McCormack, 2019). However, for victim groups to discharge these roles, they need to be resourced and have adequate capacities for meaningful engagement (Garkawe, 2003; Sprenkels, 2017). Some argue that commissions and similar bodies can help build the capacity of victim groups and participatory processes (Correa et al., 2009). But although legal mechanisms such as inquiries can be helpful, including in HIA cases (McAuliffe, 2017), lessons from TJ prompt more critical questions, such as: how useful are official legal mechanisms (including inquiries) as tools for --investigating the past?

Unofficial, civil society-led truth-seeking initiatives have sometimes been found to be more effective in generating victim participation (Lundy & McGovern, 2008; Sprenkels, 2017). As TJ teaches us, supporting local initiatives such as memorialisation and storytelling, sponsoring advocacy work, and independent research into archives and the past, should be recognised as central to any approach to HIA.

### **5. Constructing systemic narratives of the past**

A final lesson that TJ offers on HIA concerns constructing narratives of the past and addressing systemic questions of why abuse happened in the first place. Truth commissions in theory offer much in this regard, seeking to establish the "cause, nature and extent" of violations (Hamber, 2009). Gallen (2016) sees benefit in using the TJ framework for HIA because it has a better chance of uncovering "the range of factors that contributed to the emergence of the crisis" and can "articulate multilayered conceptions of truth and responsibility" (p.343). There is much merit in these arguments.

HIA inquiries themselves have not fully addressed social and systemic issues. Often the institutional and social contexts that engendered violations are assumed to be addressed in the context of the modern state, which obscures why violations happened and obviates the need for institutional reform as a core part of post-HIA inquiry concerns. TJ mechanisms

have equally struggled with this issue. Reliance on individual evidence to build the story of the past can result in processes becoming individualised, focusing on specific victims or perpetrators. This may benefit some, but individual culpability does not get to the multi-layered conceptions of truth Gallen (2016) seeks. Equally, the limited mandates of many TJ processes exclude certain groups from participation.

The TJ principle of seeking full contextual truth would add weight to addressing HIA, but TJ mechanisms such as truth commissions will not develop a contextual narrative if their mandate excludes systemic issues. Unless TJ processes are empowered to carry out investigations, inquiries and research beyond simple testimony, the comprehensive story will not be told. A key lesson is that to address the past, the focus must extend beyond the limited “scope of justice by engaging structural violence” (Nagy, 2013, p.71). It is only when the structural context of human rights violations is centre stage in any HIA process that the analytic and systemic promises of TJ can be realised. This also holds the key to truly understanding victim needs in the widest frame possible, opening the door to addressing such needs more effectively.

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